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IMPLEMENTATION OF NEW RULES GOVERNING INTERNATIONAL SECTION 214 APPLICATIONS AND SECTION 310(b)(4) DETERMINATIONS

The Commission on November 30, 1995 released its *Report and Order* in IB Docket No. 95-22, *Market Entry and Regulation of Foreign-affiliated Entities,* FCC 95-475, 60 Fed. Reg. 67,332. The rules adopted in the *Report and Order* became effective January 29, 1996. The Telecommunications Division of the International Bureau provides this briefing sheet to remind U.S. international carriers and applicants of the effective date of the rules, their new obligations under these rules, and our new processing procedures. This briefing sheet also clarifies the manner in which the Commission will process international Section 214 applications filed prior to January 29, 1996.

In summary, the new rules:

- Require an applicant for international Section 214 authority to demonstrate that the destination market offers effective competitive opportunities where it seeks to provide:
  - facilities-based service,
  - switched resale or
  - resale of non-interconnected private lines

  and where the applicant is affiliated with a foreign telecommunications carrier with market power in the market it seeks to serve.

- Apply the effective competitive opportunities analysis to foreign indirect investments of greater than 25 percent in U.S. common carrier radio licensees.

- Change the definition of a foreign affiliated carrier, for the purpose of applying the market entry rules, from one that controls or is controlled by a foreign carrier to one in which a foreign carrier holds a greater than 25 percent stake.

- Apply dominant carrier regulation to carriers in which a foreign carrier holds a greater-than 25 percent interest, or which hold a greater-than 25 percent interest in a foreign carrier.

- Require U.S. international carriers to notify the Commission 60 days prior to acquisition by a foreign carrier of a ten percent or greater interest. If the notification

raises a substantial question under the new rules, then the carrier must receive prior approval by formal written order prior to consummation of the transaction.

In order to implement these policies and procedures, the new rules require U.S. international carriers, including applicants filing for international Section 214 authorization, to provide certain information to the Commission. These requirements are specified in Sections 63.01(r)-(s) and 63.11 of the Commission's rules, as amended by the *Report and Order*.

The following information may be helpful in complying with the Commission's new rules.

Q.1.: To which applications do the new rules apply?

A.1.: The Commission will apply the new rules to all applications acted upon on or after January 29, 1996.

Q.2: For parties with applications currently pending, must they amend their applications?

A.2: **Affiliations:** Applicants must amend their pending applications within 30 days of the effective date of these rules (*i.e.*, no later than February 28, 1996) to provide any new information required by the new rules. Except in the case of applications that the Bureau may act upon on or prior to February 28 (*see Q.4. below)*, a carrier that does not have any new information to report need not submit any amendment.

Example 1: Section 63.01(r)(2), as amended, requires that applicants identify not only direct but also indirect ten percent equity holders. Any applicant with such indirect equity holders that it did not identify in its application must amend its application to provide that information.

Example 2: If an applicant reported that it is controlled by a foreign carrier and there are no other foreign carrier "affiliations" within the new meaning of that term, that applicant need not amend its application (unless it has indirect ten percent interests to report). However, in the case where a carrier reported no affiliation under the old rules, but does have an affiliation under the new rules, that carrier is required to amend its application, even if it has no affiliation in the market it seeks to serve.

Special Concessions: The *Report and Order* requires that all applicants now certify that they have not agreed to accept any special concessions. However, applicants filing prior to the effective date of the rules need not amend their applications if the only purpose is to certify that no special concessions have been agreed to.

Q.3: Will the filing of amendments cause grant of applications be delayed?

A.3: Major amendments to applications will be placed on public notice and subject to comment for 30 days. Major amendments are any amendments which are, or appear to be of decisional significance to a particular application. For example, if an amendment identified an affiliation that required an effective competitive opportunities

analysis, it would be considered a major amendment.

Q.4: Will the Bureau continue to process applications between the effective date of the rules (1/29/96) and the date amendments are required to be filed (2/28/96)? In other words, if a carrier is not required to file an amendment because there are no changed circumstances, will grant of its application nonetheless be delayed until after February 28th?

A.4: The Bureau will contact all applicants whose applications are to be acted upon between 1/29/96 and 2/28/96, and will request that applicants amend their applications prior to February 28 in order to expedite grant of the authorization.

Q.5: What if the application has been placed on streamlined processing prior to January 29th?

A.5: Any application granted prior to January 29th is not affected by the new rules. Any streamlined application not granted prior to January 29th is subject to the requirement that applicants provide additional information as required. Because of the government shutdown, no applications were filed under streamlined processing that would be granted after January 29th and before February 28th. The Bureau will therefore not, as a general rule, contact streamlined applicants to request additional information. Nonetheless, applicants filing under streamlined processing are under an obligation to amend their applications where necessary.

Q.6: What are the consequences if an applicant fails to amend its application?

A.6: For applications granted after February 28th, we are relying on the good faith of applicants to provide the necessary information. If the record otherwise reveals that necessary information was not duly disclosed, such failure to disclose could constitute grounds for denial of authorization. Failure to properly amend an application could also result in fines or forfeitures in certain circumstances.

Q.7: How do the Section 63.11 notification and prior approval requirements differ from the general requirement that applicants amend their pending international Section 214 applications by February 28, 1996 to conform to the new rules?

A.7: **Amendments to Pending Applications:** The requirement that applicants for international Section 214 authority amend their pending applications to conform to the new rules (*see Q.2. above)* applies to any party with a pending application filed prior to January 29, 1996, whether or not that party has been authorized previously to provide international service under Section 214. Applicants should review *Q. 2.* above and the new provisions of Section 63.01(r) & (s) to determine whether any additional information should be filed as an amendment to their pending applications.

- **Note:** Section 63.01(r)(2) requires that applicants identify all entities that hold, either directly or indirectly, 10 percent or more of the shares or other equity in the applicant. Section 63.11, as explained below, contains a separate and

different request for information about existing 10 percent ownership interests by foreign carriers in the capital stock of an authorized U.S. carrier.

Section 63.11: The Section 63.11 notification and prior approval requirements apply to all authorized international Section 214 carriers. Section 63.11 contains "one-time" and "on-going" notification and prior approval requirements.

- **One-Time Notification Requirements:** Section 63.11(a) requires any authorized U.S. international carrier that is, or that has, an "affiliation" with a foreign carrier, within the meaning of Section 63.01(r)(1)(i)(A) or (B) of the new rules, to notify the Commission no later than February 28, 1996. Section 63.11(a) also requires any authorized U.S. international carrier to notify the Commission by that date of any existing 10 percent or greater interests, whether direct or indirect, held by a foreign carrier in the capital stock of the U.S. carrier.

- **On-Going Notification and Prior Approval Requirements:** Section 63.11(a) contains an on-going requirement that any authorized U.S. international carrier that acquires an affiliation with a foreign carrier within the meaning of Section 63.01(r)(1)(i)(A) inform the Commission within 30 days of the acquisition of such affiliation. Section 63.11(b) requires that any authorized U.S. international carrier that knows of a planned investment by a foreign carrier of a 10 percent or greater interest, whether direct or indirect, in the capital stock of the authorized carrier, notify the Commission within 60 days prior to the acquisition of such interest.

Q.8: If the Commission has already been informed in a Section 214 application of foreign carrier ownership, is additional information required to be filed under the notification provisions of Section 63.11(a), as amended?

A.8:
- Even if information was previously provided as to an interest held by a foreign carrier, applicants may need to file a Section 63.11 notification.

- Section 63.11(a) of the Commission's rules requires authorized carriers to identify foreign carrier "affiliates," as that term is defined under the new rules, and any existing ten percent interests held by foreign carriers.

- The only exception to this notification requirement is contained in paragraph (a)(2) of Section 63.11. That paragraph provides that any carrier which has previously notified the Commission of an "affiliation" with a foreign carrier, as defined under the old rules, need not notify the Commission again of the same affiliation.

- Thus, the notification requirement would apply where the level of ownership was previously disclosed but the applicant did not certify that the ownership interest constituted an affiliation with a foreign carrier within the meaning of the old rules.

- Information filed under Section 63.11(a) may cause a change in the regulatory status of the U.S. carrier in its provision of service to a country where the carrier has an affiliation with a foreign carrier.

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